



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/15425/2016

THE IMMIGRATION ACTS

Heard at Field House
On 19th September 2018

Decision and Reasons Promulgated
On 11th October 2018

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

**SHARVIT SHAMBHUBHAI NAKRANI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Vatish, instructed by Chancery Solicitors.
For the Respondent: Mr P Deller, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was granted permission to appeal a determination of First-tier Tribunal Judge Oliver, which dismissed the appellant's appeal, on human rights grounds, against a decision of the Secretary of State dated 6th June 2016.

Application for Permission to Appeal

2. The application for permission made contended the judge materially erred in concluding that the appellant failed to meet requirements of 'humanitarian protection under article 3' (sic) of the ECHR, and erred in refusing the appellant's appeal by stating the appellant did not meet the requirements of paragraph 276 ADE. The judge erred in applying the incorrect test as to whether there were very significant obstacles for the appellant integrating into India. The judge failed to take into consideration the fact that the ruling party BJP had significantly

threatened the appellant. The judge had not considered the appellant's online activities and the political associations.

3. Further, the judge did not acknowledge the appellant's extensive private and family life in the UK. The reasons given by the respondent in her refusal letter were generic in nature and did not justify the interference with his rights.
4. The judge erred in determining that it would not be disproportionate for the appellant to be returned. The appellant had clearly demonstrated his article 3 human rights.
5. The judge failed to apply the principle of common law fairness as established in **Naved and Thakur (common law fairness)** [2011] UKUT 00151 (IAC). There should be a fair system and it should be operated fairly. The requirements of fairness were set out in **R v Home Secretary ex Doody** [1994] IAC 531.

The Hearing

6. At the hearing, Ms Vatish advanced that the judge had conflated his findings and had not taken into account all relevant factors. Further he had not applied Section 117. Ms Vatish relied on her written submissions.
7. Mr Deller's position was that there was nothing wrong with the decision. The evidence came nowhere close to establishing real risk on Article 3 grounds and the appellant could not succeed on Article 8 grounds. The errors asserted were not present.

Conclusions

8. There is no requirement for formulaic adherence to the Razgar test. To state merely that the judge erred in failing to find that the appellant did not meet the requirements of article 3 or paragraph 276 ADE is essentially a disagreement with the decision.
9. The judge clearly set out at paragraph 2, the nature of the appellant's claim that he was oppressed by the ruling BJP party, and, that if he returned the money and time he had spent UK would be in vain. On return he claimed, he would be subjected to torture or inhuman and degrading treatment contrary to article 3 since he had written on Facebook and other social media against the genocide by the BJP party in Gujarat. It was also asserted that he had physical complaints and illnesses and was in the middle of receiving treatment
10. The judge recorded the detail of the Secretary of State's refusal that the evidence submitted was limited to six printed pages from his Facebook account and his social media post and all the responses had been made 2

days prior to the appellant submitting his application for further leave in September 2015. Indeed, one of the responses was from his Facebook friends. There was no evidence that his family had been targeted [4].

11. The judge identified there was no application for asylum and indeed the appellant had made a choice between that and pursuing his current appeal on compassionate grounds [6]. This was despite the appellant assessing that in 2011 that he had been nearly attacked by the BJP and in the light of this his family had to live in hiding. The judge noted the appellant claimed *'he was a member of the National Congress party and his writings were so influential that thousands of people followed his regular activities and shared his political opinion'* [7].
12. Despite detailing the respondent's refusal the judge did not fail to assess the evidence independently. At [8] the judge wrote this

'in oral evidence he said that after becoming involved in the National Congress party in India his involvement in the United Kingdom had been through social media on Facebook in Hindi. He started blogging but had to close it down because of the threats he received, which were affecting his studies. The threats had forced his family to move to live with friends. Asked what fear he had on return, he answered that, first, you would not get a job as he was unable to complete his studies, and secondly, he would be targeted. The targeting would take the form of mental and possibly physical violence and he would not have a stable life. Although he had studied for 5 years he had been tricked by the college to enrolling in an unnecessary foundation year in science and engineering will stop he had completed that with good grades and then enrolled on the BTEC Marine engineering course, supposed to be a three-year course, but during his 2nd year he suffered from insomnia and depression because of the family problems. He did not go to the doctor and it would probably have been better if he had. Because he had to reset some of his second-year course, he had to redo the whole year. It was his 4th year in the United Kingdom but only his third year of the BTEC in the following year suffered from stress when the current ruling party in India came to power stop as a result he could not finish his final year'.

13. Critically at paragraph 9, as recorded, the judge specifically reminded the appellant that it was a human rights appeal and asked him why he should be allowed to stay, and the appellant explained, emphasising his desire to complete his studies rather than the risk at home

'that it was in order to finish his studies and, after so many years in the United Kingdom, he would not feel comfortable back home. He had spent about £50,000 on his studies and owed a debt to his parents. If he went back now, he would not be a respected man

14. Under cross examination the appellant explained that he had not reported the threats he received to the police in India because they were

“not that serious; they were society threats. His family had been boycotted from cultural stuff and were basically abandoned”.

15. Not only was there a lack of evidence but on his own evidence, in this respect, the appellant’s claim could not succeed under Article 3.
16. The judge at paragraph 15 of his conclusions clearly addressed the point that the appellant did not qualify on the grounds of long residence that is 10 years residence under paragraph 276B and could not qualify on the basis of paragraph 276 ADE (20 years residence). The judge directed himself in law appropriately with his consideration of **Agyarko v SSHD** [2017] UKSC 11 and whether the decision/removal would result in unjustifiably harsh circumstances. It was evident that the appellant’s parents remained in India and his father continued to run a small business [12], and that the appellant had lived for the majority of his life (18 years) in India and had been educated there. The judge clearly stated that the appellant did not meet any compelling circumstances which outweighed the public interest in maintaining firm and fair immigration rules and at paragraph 16, bearing in mind the appellant had not claimed asylum, the judge considered the evidence in relation to his political reasons for wishing to remain.
17. The judge, unarguably rationally, relied on the appellant’s own evidence who argued that his profile came from his following as a result of his blog, but the judge concluded with adequate reasons that

‘the evidence he submitted was woefully short of establishing this and his blog has been taken down in any event. He was given the choice of making an asylum claim when his hearing was adjourned previously, despite making clear that he understands what an asylum claim is he has not chosen formally to do so and has in any event not provided any evidence beyond the very limited evidence of his social media blogging to establish any basis for fear of persecution on return will. He has simply not forwarded an arguable case to be considered’.

18. Although in relation to article 3 the fact that corroboration is not required does not mean an immigration judge is required to leave out of account the absence of documentary evidence which might reasonably be expected, **ST (Corroboration - Kasolo) Ethiopia** [2004] UKIATT. In this instance, it was the appellant’s case that his blog put him at risk and yet failed to provide adequate evidence of such when it was reasonable to expect him to do so.
19. The judge also observed at paragraph 17 and was critical of the oral evidence as follows:

‘During the hearing the appellant shifted his focus to his need to continue his studies in order to complete his degree, to repay his debt, to avoid returning on respected and to secure good employment on his return. He has not established

any unfairness of the application of the five-year study for his Degree. He has not explained how he was tricked by his college into accepting an unnecessary year-long course and his failure to complete his 2nd year because of illness has not been supported by any medical evidence'.

20. Even with regards Article 3 it is for the appellant to provide the evidence to prove his case. The judge found the appellant had not done so for the reasons given. With regard to Article 8 as set out in R (**Kaur**) [2018] EWCA Civ 1423, the test with regard very significant obstacles (or insurmountable obstacles) is a stringent and exacting one and it is incumbent upon the appellant to provide evidence

56.In the recent case of R (Mudibo) v SSHD [2017] EWCA Civ 1949 this court has emphasised the distinction, in this context, between evidence and mere assertion. The facts and decision in Jeunesse, referred to by Lord Reed in the passages which I have quoted above, show how high the bar is set.

60. It follows that in my judgment, the SSHD's first ground of appeal succeeds: Mrs Kaur had not put forward anything more than a bare and insufficient assertion of insurmountable obstacles, and the Deputy Judge was wrong to find that the SSHD's decision was vitiated by a failure to give proper consideration to this issue. It was not irrational or unreasonable for the SSHD to decide that there were no insurmountable obstacles to Mrs Kaur and Mr Singh continuing their family life in India.

...

61. Essentially this was an appellant who had not claimed asylum, not provided evidence to establish his article 3 claim on the basis of his blogging, relied on mere assertion and changed the focus of his appeal during his oral evidence. He was a young man of 28 years who had failed to provide evidence that his failure to complete his degree was because of medical issues [17] and had grown up in India and retained his family there [12]. The judge rightly considered this appeal through the lens of the immigration rules. There was a challenge during the hearing before me on the basis that the judge had failed to apply section 117B of the Nationality Immigration and Asylum Act 2002. The context of this matter, as the judge was fully apprised, was that the appellant was a 26-year-old Indian man born on 3 March 1992 who arrived in the United Kingdom on 25 September 2010 with Tier 4 student leave. His leave was extended to 29 September 2015 and since that date has been extended by virtue of section 3C. His leave was thus always precarious. That is the context in which the appellant's appeal was to be considered and there was no indication that the judge was not aware of the status of the appellants leave. The judge did not specifically cite Section 117 but at [18] factored in that

'his stay in the United Kingdom has always been temporary and precarious and can have had no expectation of being permitted to stay at the end of his studies'.

62. Any omission of Section 117 would have been to the appellant's advantage but in fact this is a clear reference to Section 117 by the judge.
63. The judge wove the various factors in throughout the decision and did not 'conflate' the issues. He was bound to consider the evidence as a whole and in the round with regard to Article 3 and did so. He took into account the relevant factors for Article 8. The judge correctly approached the balancing exercise in relation to proportionality and the public interest, simply stating that the appellant had *'not shown that he would face insurmountable obstacles on return in all the circumstances'*. The judge cannot be criticised for writing a short but succinct decision which encapsulated the facts and gave adequate reasoning.
64. As explained in **Shizad (sufficiency of reasons: set aside)** [2013] UKUT 00085 (IAC)

'Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge'.

65. The decision does not ignore the principles of fairness and the challenge does not make out this ground. As **Doody** states
- 'the standards of fairness are not immutable. They may change with the passage of time, both in the general and in the application to decisions of the particular type. (3) the principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision and this is to be taken into account in all aspects.... (5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result or after it is taken with a view to procuring its modification or both'.*
66. There is no question that the appellant was not afforded the opportunity to make representations and indeed he attended the hearing and was represented.
67. The decision contains no error of law and will stand. The appellant's appeal is dismissed.

Signed *Helen Rimington*

Date 20th September 2018

Upper Tribunal Judge Rimington